

Department of the Army, DoD

§ 536.70

the Federal Rules of Civil Procedure or by the work product documents doctrine.

(b) Regardless of the claim's nature or the statute under which it may be considered, letters denying claims on jurisdictional grounds that are valid, certain, and not easily overcome (and for this reason no detailed investigation as to the merits of the claim was conducted), must state that denial on such grounds is not to be construed as an opinion on the merits of the claim or an admission of liability. In medical malpractice claims, the denial should state that the file is being referred to U.S. Army Medical Command for review. If sufficient factual information exists to make a tentative ruling on the merits of the claim, liability may be expressly denied.

NOTE TO § 536.65: See § 536.53, on denying a claim for failure to substantiate. In addition, the procedures and rules in DA Pam 27-162, paragraph 2-69, settlement and approval authority, apply equally to the denial of claims. See also DA Pam 27-162, paragraph 2-75.

§ 536.66 The "Parker" denial.

(a) When suit is filed before final action is taken on a subpart D of this part claim, a denial letter will be issued only upon request of DOJ or the trial attorney. If suit is filed prematurely or in error, the claimant may be requested to withdraw the suit without prejudice. Such a request must be coordinated with the trial attorney.

(b) Claimants who have filed companion claims should be notified that, due to suit being filed, no action can be taken pending the outcome of suit and they may file suit if they wish.

NOTE TO § 536.66: For further discussion see DA Pam 27-162, paragraph 2-76.

§ 536.67 Mailing procedures.

Thirty or sixty day letters seeking information from claimants, final offers and denial notices are time-sensitive as they require a claimant to take additional action within certain time limits. Accordingly, follow procedures to ensure that the date of mailing and receipt of a request for reconsideration are documented. Use certified mail with return receipt requested (or registered mail, if being sent to a foreign country other than by

the military postal system) to mail such notices. Upon receipt, an appeal or request for reconsideration will be date-time stamped, logged in, and acknowledged as set forth in § 536.68.

NOTE TO § 536.67: See also AR 27-20, paragraph 13-5, and DA Pam 27-162, paragraph 2-77.

§ 536.68 Appeal or reconsideration.

(a) An appeal or a request for reconsideration will be acknowledged in writing. A request for reconsideration under subpart D of this part invokes the six-month period during which suit cannot be filed, 28 CFR 14.9(b). The acknowledgment letter will underscore this restriction.

(b) Where the contents of the appeal or request for reconsideration indicate, additional investigation will be conducted and the original action changed if warranted. Except for subpart J of this part, which sets forth separate rules for FCCs, if the relief requested is not warranted the settlement authority will forward the claim to a higher settlement authority with a claims memorandum of opinion (see § 536.62) stating the reasons why the request is invalid.

NOTE TO § 536.68: See also DA Pam 27-162, paragraph 2-78.

§ 536.69 Retention of file.

After final action has been taken, the settlement authority will retain the file until at least one month after either the period of filing suit or the appeal has expired and until all data has been entered into the database. A paid claim file will be retained until final action has been taken on all other claims arising out of the same incident. If any single claim arising out of the same incident must be forwarded to higher authority for final action, all claims files for that incident will be forwarded at the same time. For further discussion see DA Pam 27-162, paragraph 2-79.

§ 536.70 Preparation and forwarding of payment vouchers.

(a) An unrepresented claimant will be listed as the sole payee. Joint claimants will not be listed since settlement agreements must specify the amount payable to each claimant individually

and each must be issued a separate check.

(b) When a claimant is represented by an attorney, only one payment voucher will be issued with the claimant and the attorney as joint payees. The payment will be sent to the office of the claimant's attorney. The attorney of record, either an individual or firm designated by the claimant, will be the co-payee. If claimant has been represented by other attorneys in the same claim, such attorneys will not be listed as payees, even if they have a lien. Satisfaction of any such fee will be a matter between the claimant and such attorney. If payment is made by electronic transfer, the funds will be paid into the account of the claimant. However, if requested, the payment may be made into the attorney's escrow account provided the claimant has provided written authorization.

(c) In a structured settlement the structured settlement broker will be the sole payee, who is authorized to issue checks for the amounts set forth in the settlement agreement. The upfront cash payment may be deposited into an escrow account established for the benefit of the claimant.

(d) If a claimant is a minor or has been declared incompetent by a court or other authority authorized to do so, payment will be made to the court-appointed guardian of the minor or incompetent, at a financial institution approved by the court approving the settlement.

(e) If the claimant is representing a deceased's estate on a wrongful death claim, or a survival action on behalf of the deceased, the payment will be made to the court-appointed representative of the estate. No payment will be made directly to the estate.

NOTE TO § 536.70: See also § 536.63 and DA Pam 27–162, paragraphs 2–73 and 2–81.

§ 536.71 Fund sources.

(a) 31 U.S.C. 1304 sets forth the type and limits of claims payable out of the Judgment Fund. Only final payments that are not payable out of agency funds are allowable, per the Treasury Financial Manual, Volume I, Part 6, Chapter 3110, at Section 3115, September 2000. Threshold amounts for payment from the judgment fund vary

according to the subpart and statutes under which a claim is processed. To determine the threshold amount for any given payment procedure one must arrive at a sum of all awards for all claims arising out of that incident, including derivative claims. A joint amount is not acceptable. A claim for injury to a spouse or a child is a separate claim from one for loss of consortium or services by a spouse or parent. The monetary limits of \$2,500 set forth in subpart D and \$100,000 set forth in subparts C, F or J of this part, apply to each separate claim.

(b) A claim for \$2,500 or less arising under subpart D or E, or under §§ 536.107 through 536.113 of subpart G, is paid from the open claims allotment (see AR 27–20 paragraph 13–6 b(1)) or, if arising from a project funded by a civil works appropriation, from COE civil works funds. The Department of the Treasury pays any settlement exceeding \$2,500 in its entirety, from the Judgment Fund. However, if a subpart G of this part, §§ 536.107 through 536.113 claim is treated as a noncombat activity claim, payment is made as set forth in paragraph (c) of this section.

(c) The first \$100,000 for each claimant on a claim settled under subparts C, F or J of this part is paid from the open claims allotment. Any amount over \$100,000 is paid out of the Judgment Fund.

(d) If not over \$500,000, a claim arising under subpart H of this part is paid from the open claims allotment or civil works project funds as appropriate. A claim exceeding \$500,000 is paid entirely by a deficiency appropriation.

(e) AAFES or NAFI claims are paid from nonappropriated funds, except when such claims are subject to apportionment between appropriated and nonappropriated funds. See DA Pam 27–162, paragraph 2–80h.

(f) COE claims arising out of projects not funded out of civil works project funds are payable from the open claims allotment not to exceed \$2,500 for subpart D claims and \$100,000 for claims arising from subparts C, F or J of this part and from the Judgment Fund, over such amounts.

NOTE TO § 536.71: For further discussion see DA Pam 27–162, paragraph 2–80.